ONTARIO

THE ONTARIO MUNICIPAL BOARD
123 Edward Street
Toronto 1.

64th ANNUAL REPORT

of

THE ONTARIO MUNICIPAL BOARD

Upon the Affairs of the Board

During the Year Ended

December 31, 1969

TO: THE HONOURABLE THE MINISTER OF MUNICIPAL AFFAIRS

Pursuant to Section 100 of
The Ontario Municipal Board Act
R.S.O. 1960, Chapter 274

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ONTARIO

THE ONTARIO MUNICIPAL BOARD

PART I

NATURE AND SCOPE OF THIS REPORT

This report is made under Section 100 of The Ontario Municipal Board Act, R.S.O. 1960, Chapter 274, which provides as follows:

> "100.-(1) The Board shall, after the close "of each calendar year, make an annual re- "port upon the affairs of the Board to the "Minister of Municipal Affairs who shall "file it with the Provincial Secretary.
> "
> " (2) The Provincial Secretary shall "submit the report to the Lieutenant Governor "in Council and shall then lay the report be- "fore the Assembly if it is in session or, "if not, at the next ensuing session".

Some suggestions have been made in the past, presumably because of the wide ranging jurisdiction of the Board, that this annual report should in effect review the "state of the province" and analyse some of the problems facing municipalities and possible solutions. This Board does not conceive such to be the intent and purpose of the above statutory provision.

In more recent years especially this Board has fostered and furthered the concept that it acts as a tribunal rather than an agency or commission. Consequently the Board is not the custodian of any phase or aspect of the relations of the Province with the municipalities and this is intended as a report on the affairs of the Board.

Therefore it must follow that if this report is super- imposed on that of the year previous it will be found that the figures have changed but the pattern is essentially the same. That is because the Board's duties were the same.

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PART II

ESTABLISHMENT AND OPERATION

The Board acts only to deal with applications made and over which the Board is given jurisdiction by some statute. Many applications require notice either under a statutory provision or under a Board rule established to conform to the rule of natural justice.

Applications which do not require notice normally are decided without a hearing. Capital expenditures by local government bodies, no part of the cost of which is to be recovered out of the general rate, are an example of this type of application. In the case of a great many applications, such as applications for approval of land use control by-laws passed under authority of Section 30 of The Planning Act, no objection is received after notice to those affected and in that event a decision is made by the Board without a hearing.

In all cases in which objections are received and in cases in which the statute requires a hearing, a decision is not made by the Board until after a hearing on due notice.

The Board is given jurisdiction under a large number of statutes but its procedure and general powers are governed by The Ontario Municipal Board Act. The Board carries out and performs statutory duties and functions only, and while it is a corporate body the practice is strictly followed of assigning members to specific applications which require a hearing and thereafter they are considered seized of such application. If a change must be made for an unavoidable reason the hearing is commenced de novo. Two members are a quorum to hear and dispose of any application and the Chairman may appoint one member to hear any application and report to the Board. In such cases the decision or order is made by the Chairman or by two other members, one of whom must be a vice-chairman.

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Two functions of the Board, namely the hearing of assessment appeals from County and District judges and acting as arbitrator to award compensation in expropriation cases, can be said to be strictly judicial while most, if not all, of the Board's other jurisdiction, whether by way of appeal or as a tribunal of first instance, is administrative.

In this connection reference is made to a judgment of the Ontario Court of Appeal in Re Ashby, 1934 O.R. at page 421. There the Court adopted with approval an article setting forth the difference between a judicial and an administrative tribunal. A judicial tribunal hears evidence, makes findings and applies the law; an administrative tribunal hears evidence, makes findings and applies policy.

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PART III

MEMBERSHIP and ORGANIZATION

The membership and organization of the Board during the period covered by this report was as follows:

J. A. KENNEDY, Q.C. (Appointed October 1st, 1956)	Chairman
A. H. ARRELL, Q.C. (Appointed June 30th, 1961)	Vice-Chairman
H. E. ROBERTS (Appointed June 30th, 1961)	Vice-Chairman
D. JAMIESON (Appointed December 1st, 1955)	Vice-Chairman
W. SHUB, Q.C. (Appointed June 1st, 1963)	Vice-Chairman
A. L. McCRAE (Appointed December 1st, 1958)	Member
J. V. LUDGATE (Appointed April 1st, 1962)	Member
F. G. BLAKE (Appointed November 15th, 1962)	Member
R. M. McGUIRE (Appointed November 1st, 1963)	Member
W. T. SHRIVES (Appointed October 18th, 1965)	Member
W. H. J. THOMPSON, Q.C. (Appointed July 1st, 1966)	Member
B. E. SMITH (Appointed August 1st, 1968)	Member
ALAN VAN EVERY, Q.C. (Appointed September 3rd, 1968)	Member
D. S. COLBOURNE (Appointed September 3rd, 1968)	Member
.....	
R. SCOTT (Appointed June 1st, 1967)	Secretary
D. H. SUTHERLAND (Appointed January 1st, 1963)	Registrar

All Board members and staff are engaged full-time. The Board's Chambers were moved from the Ontario Government Building at 145 Queen Street West, Toronto 1, to 123 Edward Street on December 5, 1969.

PART IV

JURISDICTION AND FUNCTIONS

The jurisdiction and function of this Board are a part of what is known as the administrative process. The Board is not a department of government but a tribunal exercising a wide variety of jurisdiction with respect to municipalities a great part of which was exercised at one time by the Executive Council of the Province or by the Legislature.

When the Board holds a hearing it is subject in law to the rules of natural justice which, as applied in this case, could be stated as follows:

1: The tribunal shall be free from bias.

2: All persons having an interest in the subject matter shall be heard.

In matters of law and jurisdiction there is an appeal from the Board to the Court of Appeal and on all matters there is an appeal to the Lieutenant Governor-in-Council.

The actual duties and functions of the Board are found largely in The Municipal Act, The Assessment Act, The Planning Act and the school acts, but in addition there is a myriad of other statutory provisions which confer jurisdiction on the Board in a very wide variety of cases. The functions and jurisdiction of the Board may be divided into two general categories:

1: Responsibility for the sound growth and development of municipalities within the framework of the statutes with particular regard to economic stability.

2: Jurisdiction as arbitrator in the first instance or by way of appeal to determine compensation to be paid by the Crown in the right of Ontario or its Crown corporations, by municipalities and other local authorities, and by certain private corporations.

These two divisions are reported on in Parts IV and V respectively of this report.

By The Expropriations Procedures Act, which came into force December 20, 1968, a Land Compensation Board is established which will assume completely the jurisdiction referred to in 2 above, as well as similar jurisdiction previously vested in County Judges and Official Arbitrators. By that statute this Board is directed to perform all functions of the Land Compensation Board until that Board is established. It is anticipated that Section 28 of the statute bringing the Land Compensation Board into operation will be proclaimed during the year 1970.

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PART V

GROWTH AND ECONOMIC STABILITY OF MUNICIPALITIES

For the purpose of clarity in this report and for convenience the Board's jurisdiction in this part can be divided under the following headings:

1: Constitution, Boundary Revision and Dissolution of Municipalities.

2: Approval of Capital Undertakings and of the Imposition of Rates and Levies to Recover the Cost thereof.

3: Approval of Restricted Area By-laws, Official Plans and Plans of Subdivision.

4: Assessment Appeals.

SECTION 1

Constitution, Boundary Revision and Dissolution of Municipalities

Given in Schedule "A" to this report is a list of nineteen annexations ordered by the Board during the year.

The Improvement District of Marathon was erected as a township municipality.

The Hamlet of Ear Falls was erected as an improvement district.

The former Police Village of Earlton was dissolved upon application by the Board of Trustees.

During the year 1969 fourteen orders were made under The Municipal Corporations Quieting Orders Act to establish the legal existence, corporate status, proper area and boundaries. A list of these municipalities is given in Schedule "C" to this report.

SECTION 2

Approval of Capital Undertakings and of the Imposition of Rates and Levies to Recover the Cost thereof

Each year the Board requires every municipality seeking approval of any capital expenditure to file with the Board a completed questionnaire giving information in some detail as to the assessment and capital debt of the municipality. This information is required and used in assessing the ability of the municipality to incur new capital debt.

In a number of municipalities, which include all cities, a substantial number of towns and villages and a number of townships, the Board requires to be filed a five-year forecast showing the estimate made by the Council of the capital needs for the whole or part of the cost of which the municipality expects to be called on to issue debentures in each of the five years. This forecast is studied in the light of the financial position of the municipality and if the forecast for the current year is found to be within the financial competence of the municipality and otherwise acceptable, a quota is established for the municipality against which are charged all applications for expenditure made during the year. This avoids the necessity of examining the capital position of the municipality at the time of each new application.

To a greater extent even than in 1968, the Board, because of the scarcity of capital funds and very high interest rates, accelerated its policy of encouraging local government bodies to scale down and limit demands on the capital market to the needs for more urgent capital works. Once again the response at the local level was creditable and certainly commendable displaying a keen appreciation by local officials of the serious situation that exists.

For the first time the Board encountered in 1969 the requirement for adjusted procedures made necessary by the coming into force of new school legislation creating larger boards of

education and vesting in most of those boards the power to issue their own debentures for the cost of capital works. Naturally, this meant a completely new system of records of local government debt. Extensive new forms had to be developed and promulgated. The information had to be tabulated both by municipality and by board of education. It is not surprising that some confusion and some delays resulted which in turn impeded the smooth flow of capital expenditures achieved in former years.

It is only fair to report that the Board's staff rose to meet these especially arduous developments and local officials in turn provided most commendable co-operation. A great deal of valuable experience has been gained from those early months and there is reason to hope now that the sharpest corner has been turned. Improved procedures bid fair to solve most of the problems.

The Board also keeps watch over sharp increases in the debt of a municipality and over special rates to be imposed to meet the cost of capital undertakings. In the latter case notice is directed to those sought to be specially assessed and if objection is made a hearing is held.

In the year 1967 the Legislature enacted subsection (7) of Section 64 of The Ontario Municipal Board Act which empowers the Board to make a blanket order approving the expenditure of moneys not exceeding a stated sum for any work or works of the type listed without specific approval in each case, providing all other requirements of the law in respect of each particular project have been met. The statute requires that before any project is undertaken the treasurer of the municipality must certify to the Council that sufficient funds remain available for such project out of the blanket amount or amounts approved by this Board for the current year.

While the use made of this provision in 1968 was rather disappointing, the year 1969 saw a gradual increase in the number of "blanket" applications under this section. There is reason to expect that a more liberal use will be made in the future, resulting in more expeditious processing of many capital expenditures.

The following table shows the number of new capital expenditure applications received and the total amount approved in each of the last five years:

Year	Number	Amount
		$
1965	2,690	510,137,199.62
1966	2,874	619,231,676.61
1967	2,869	608,595,545.48
1968	2,841	703,939,055.03
1969	2,456	666,407,390.00

The reduction in 1969 from 1968 is a direct result of the efforts of local government to limit demands on the capital market to more urgent needs.

As a result of a requirement contained in The Ontario Education Capital Aid Corporation Act passed in 1966 the projects of all school boards to be financed under the provisions of this statute require the approval of this Board under Section 64 of The Ontario Municipal Board Act.

This means that many separate school boards are required, for the first time, to obtain the approval of this Board under Section 64 of The Ontario Municipal Board Act. It is understandable that this legislation has very greatly increased the number of applications to this Board for approval of capital expenditures for school purposes.

ONTARIO WATER RESOURCES COMMISSION

The Ontario Water Resources Commission Act provides for the undertaking by the Commission on behalf of a municipality

of the construction of water works and sewerage works. Since these projects create a debt of the municipalities they require the approval of the Board under Section 64 of The Ontario Municipal Board Act. When part of the cost is to be raised by a special rate the Board requires public notice and if objections are made a public hearing is held.

By an amendment to the statute the Commission is empowered to enter into agreements with municipalities whereby the Commission will construct sewage works and water production works to serve a particular municipality or group of municipalities. The agreement provides that the works shall remain the property of the Province and that a sewage treatment or water supply service is provided for the municipality according to certain specified rates of charges.

When any part of the cost to the municipality is to be raised by a special rate the Board requires public notice and if objections are made a public hearing is held.

During the year 1969 the Board received 44 applications from the Commission for projects at an estimated cost of $8,585,235.72.

SECTION 3

Approval of Restricted Area By-laws, Official Plans and Plans of Subdivision

The jurisdiction of the Board under this heading is conferred by The Planning Act.

The duties of this nature conferred on the Board are perhaps unique in any democratic jurisdiction. The power to approve official plans, official plan amendments, and plans of subdivision is vested by the statute in the first instance in the Minister of Municipal Affairs. However, the Minister may, and in certain cases shall, refer the application for

approval to be decided by this Board. While not required by statute so to do, the Board invariably holds a public hearing on notice to all those believed to have an interest in the subject matter.

By-laws authorized by Section 30 of The Planning Act referred to in the statute as restricted area by-laws and commonly referred to as zoning by-laws, are perhaps properly called land use control by-laws. Because this term is cumbersome and the term zoning by-law is so convenient this latter reference is rapidly assuming a status through general acceptance. Study should be given to incorporating this description into the statute with an adequate definition.

No by-law passed under authority of Section 30 of The Planning Act or any amendment comes into force without the approval of the Board. A procedure has been established by the Board whereby municipalities are required to give notice of intention to apply to the Board for approval of any such by-law that has been passed. The notice required is one calculated best to bring the proposed publication to the notice of all those concerned. A specified period of time, usually fourteen days, is given for objections in writing to be delivered to the municipal clerk. A similar notice is sent to the Community Planning Branch of the Department of Municipal Affairs in order that the Board may receive an opinion from that Branch on planning and technical aspects of the by-law. If these opinions are critical they are made available for comment by those concerned.

If no objection is made approval is practically routine. If there are objections a hearing is held on notice to owners specially concerned and to all objectors.

Among the criticisms levelled at the Board is that these decisions should be made by planners and not by laymen to the planning profession. The making of decisions or judgments in disputed cases by technologists is not the basis of jurisprudence in jurisdictions where justice is under the rule of law. The lis is determined after an adversary hearing where professional and technical opinions are expressed by witnesses subject to cross-examination. Opinions that will govern decisions must not be arrived at ex parte, hidden in the mind of the tribunal. This contravenes the adversary system. Before opinions are decisive they must be subject to the light of discussion and especially cross-examination.

Another criticism is that the Board should employ professional planners to advise and assist in decisions. If the adversary system is to be followed anyone advising the Board should be produced in contentious cases to give evidence under oath and be subject to cross-examination. But the Board is firmly of the respectful opinion that the witness in the box should not be an employee of the judge on the bench, especially if he is giving opinion evidence.

The function of the Board in this area, which consists of reviewing decisions by local elected representatives, is to protect the rights of individuals and minorities. Democracy by definition is the rule of the majority but if democracy is to promote justice then it must have a built-in mechanism to protect the rights of the individual - the minority. This is basically the role of the Board under The Planning Act.

The number of applications made to the Board under this legislation during the year, with figures for the two previous years, is as follows:

		1969	1968	1967
1.	Applications for approval of restricted area by-laws	1749	1526	1208
2.	Applications for approval of plans of redevelopment	2	2	2
3.	Applications for approval of proposed plans of subdivision	6	5	11
4.	Applications for approval of official plan amendments	37	19	33
5.	Appeals to Board for a direction that a restricted area by-law be amended by Council	62	54	45
6.	Appeals from committes of adjustment	292	561	401

SECTION 4

Assessment Appeals

During the year 1969 assessment appeals were made to the Board under the several statutes as follows:

The Assessment Act	613
The Conservation Authorities Act	6
The Local Improvement Act	1
The Municipal Tax Assistance Act	4
The Power Commission Act	9
	633

This compares with 243 such appeals made in the year 1968. The increase was in appeals from assessment for municipal taxation. This very large increase was caused chiefly by reassessments in which the level of assessment was raised but resulting, of course, in a lower mill rate.

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PART VI

ARBITRATIONS IN RESPECT OF COMPENSATION FOR LANDS TAKEN OR INJURIOUSLY AFFECTED

During the year 1969, except as noted earlier in this Report, the Board had jurisdiction to determine compensation or damages to be allowed for lands taken or injuriously affected under various public statutes. The courts have held that in this field the Board must follow strict rules of evidence and what amounts to reasonably strict court procedure. As required by the rules of natural justice the Board's decisions must be based only on known evidence and after a full hearing conducted according to legal principles. As noted earlier, this is a judicial function.

During the year 1969 applications were made to the Board for compensation for damages to be allowed for lands taken or injuriously affected by authorities with the right of expropriation as follows:

	1969
The Conservation Authorities Act	20
The Highway Improvement Act	17
The Municipal Act	56
The Ontario Energy Board Act	4
The Ontario Water Resources Commission Act	1
The Power Commission Act	2
The Public Hospitals Act	2
The Public Works Act	3
The Secondary Schools and Boards of Education Act	4
	109

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PART VII

REVENUE

In compliance with the requirement of Section 99 of The Ontario Municipal Board Act the Board has adopted a tariff of fees payable on various types of applications and orders.

The following table sets forth the fees received by the Board and transferred to the Treasurer of Ontario for the fiscal year ending March 31st, 1969, and the preceding six years. In conformity with the present system of provincial accounting this table is given for the fiscal year, in contrast to other statistics contained in this report which are made for the calendar year ending December 31st, 1969.

Fiscal Year	Amount
1962-63	$ 319,086.12
1963-64	308,631.05
1964-65	308,066.04
1965-66	442,623.27
1966-67	578,484.00
1967-68	611,815.82
1968-69	563,956.95

The revenues of the Board for the calendar year 1969 amounted to $513,278.85, down from $625,419.55 in the calendar year 1968. This was due entirely to a reduction in the amount of capital expenditures, a reduction as reported earlier due to the monetary situation in Canada.

All of which is respectfully submitted.

J. A. KENNEDY
CHAIRMAN

R. SCOTT
SECRETARY

D. H. SUTHERLAND
REGISTRAR

This is SCHEDULE "A" to the 64th ANNUAL REPORT of THE ONTARIO MUNICIPAL BOARD

for the year 1969, made to

THE HONOURABLE THE MINISTER OF MUNICIPAL AFFAIRS

Orders Granting Annexations - 1969

Date of Order			Effective Date	Area-Acres
Sep. 20, 1968	To :	ACTON, Town of		
	From:	Esquesing, Township (part)	Oct. 1, 1968	69.787
Dec. 24, 1968	To :	ALMONTE, Town of		
	From:	Ramsay, Township (part)	Jan. 1, 1969	231.396
Nov. 19, 1969	To :	AYR, Village of		
	From:	North Dumfries, Township (part)	Jan. 1, 1970	5.000
Oct. 30, 1968	To :	CALVERT, Township of		
	From:	Iroquois Falls, Town and Teefy, Unorganized Township (part)	Jan. 1, 1969	-
Dec. 2, 1968	To :	CAPREOL & HANMER, Township of		
	From:	Wisner, Township (part)	Dec. 31, 1968	20,431.000
Jan. 28, 1969	To :	CHATHAM, City of		
	From:	Dover, Township (part)	Feb. 1, 1969	3.349
Jan. 15, 1969	To :	COCHRANE, Town of		
	From:	Glackmeyer, Township (part)	Feb. 1, 1969	218.000
Jan. 15, 1969	To :	COCHRANE, Town of		
	From:	Glackmeyer, Township (part)	Feb. 1, 1969	218.000
Dec. 4, 1968	To :	DOULING, Township of		
	From:	Fairbanks, Unorganized Township (part)	Jan. 1, 1969	9,326.000
Dec. 2, 1969	To :	ELORA, Village of		
	From:	Nichol, Township	Jan. 1, 1970	3.210
Mar. 21, 1969	To :	GALT, City of		
	From:	North Dumfries, Township (part)	Apr. 1, 1969	2.520
Mar. 31, 1969	To :	HOWARD, Township of		
	From:	Ridgetown, Town	Jan. 1, 1970	25.000
June 5, 1969	To :	KINGSTON, Township of		
	From:	Kingston, City (part)	June 1, 1969	41.422
Nov. 21, 1969	To :	LEAMINGTON, Town of		
	From:	Mersea, Township	Jan. 1, 1970	400.500
Sep. 11, 1969	To :	NIPISSING, Township		
	From:	Gurd, Geographic Township	Jan. 1, 1970	41,573.000
Jul. 31, 1969	To :	PERTH, Town of		
	From:	North Elmsley, Township (part)	Aug. 1, 1969	100.000

Schedule "A" continued

Date of Order			Effective Date	Area-Acres
Nov. 12, 1968	To :	PRESTON, Town of		
	From:	Waterloo, Township	Jan. 1, 1969	1,529.000
Mar. 31, 1969	To :	RIDGETOWN, Town of		
	From:	Howard, Township (part)	Jan. 1, 1970	233.000
Oct. 2, 1968	To :	STREETSVILLE, Town of		
	From:	Mississauga, Town (part)	Jan. 1, 1969	19.780

This is SCHEDULE "B" to the 64th ANNUAL REPORT of THE ONTARIO MUNICIPAL BOARD

for the year 1969, made to

THE HONOURABLE THE MINISTER OF MUNICIPAL AFFAIRS

Classification of Municipal Capital Expenditures
approved during 1969

I - MUNICIPAL

	Amount Approved	1969	1968
(1) General Government			
Civic Buildings	$ 3,342,191.00	$ 3,342,191.00	$ 15,571,057.84
(2) Protection to Persons & Property			
Fire	1,788,375.50		
Police	600,000.00		
Court Houses, Jails	158,000.00		
Street Lighting	370,069.00	2,916,444.50	7,351,471.78
(3) Public Works			
(a) Grade Separations	217,414.60		
Streets, Roads, Lanes	76,205,914.28		
Sidewalks	5,428,092.21		
Bridges	6,428,547.00		
Tunnels & Subways	32,294,877.15		
Road Machinery	1,710,324.74		
Conservation	603,154.00		
Waterways	84,440.21		
Workshops, Yards	65,000.00	123,037,764.19	192,341,959.32
(b) Watermains	12,385,408.00		
Storm Sewers	48,378,904.81	60,764,312.81	62,639,376.05
(4) Sanitation & Waste Removal			
Sanitary Sewers	31,798,701.07		
Sewage Treatment	30,098,936.81		
Garbage	5,052,265.00		
Waste Collection	150,000.00	67,099,902.88	32,864,230.24
(5) Health			
Clinics	218,700.35		
Hospitals	15,599,382.82	15,818,583.17	15,974,554.87
(6) Social Welfare			
Welfare Offices	168,000.00		
Homes for Aged	7,962,599.65		
Charitable Institutions	1,497,000.00	9,627,599.65	6,007,795.12
(7) Recreation Services			
Amusement Parks	30,678,042.00		
Skating Rinks	5,081,850.45		
Swimming Pools	1,933,934.57		
Community Centres	2,085,872.56	39,779,699.58	10,821,683.84

(continued)

(8) Community Services	Amount Approved	1969	1968
Theatres, Art Galleries	$ 500,000.00		
Libraries	4,586,714.00		
Housing	3,350,000.00	8,436,714.00	9,731,145.00
Total General Government		$330,823,211.78	$353,303,274.06

II - EDUCATION

Elementary Schools	$185,366,385.19		
Secondary Schools	79,169,936.41	$264,536,221.60	$287,264,230.54

III - UTILITIES

Telephone	50,000.00		
Electricity	17,400,031.00		
Waterworks	27,796,952.13		
Transportation	3,405,000.00		
Acquisition Lands	1,899,672.37		
Others:			
including parking lots	20,496,302.00	$ 71,047,957.50	$ 63,371,550.43

S U M M A R Y

General Government	$330,823,211.78	$353,303,274.06
Education	264,536,221.60	287,264,230.54
Enterprises	71,047,957.50	63,371,550.43
	$666,407,390.88	$703,939,055.03

This is SCHEDULE "C" to the 64th ANNUAL REPORT of THE ONTARIO MUNICIPAL BOARD for the year 1969, made to THE HONOURABLE THE MINISTER OF MUNICIPAL AFFAIRS

Quieting Orders Issued in 1969

CARDEN, Township of

DALTON, Township of

ELDON, Township of

EMILY, Township of

FENELON, Township of

HALLOWELL, Township of

LANARK, Township of

FRONT OF LEEDS & LANSDOWNE, Township of

LISTOWEL, Town of

MARYSBURGH NORTH, Township of

RAMSAY, Township of

RIDGETOWN, Town of

SOMERVILLE, Township of

VERULAM, Township of